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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Interconnection and Resale Obligations	)	CC Docket No. 94-54
Pertaining to	)	
Commercial Mobile Radio Services	)	

To: The Commission

REPLY COMMENTS OF THE
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.

Respectfully submitted,

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July 14, 1995

The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association"), pursuant to Section 1.405 of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations, respectfully submits its Reply Comments in the above-entitled proceeding.[1] The record in this proceeding clearly supports the Commission's tentative decision not to mandate CMRS-to-CMRS interconnection at this stage in the development of that industry. Similarly, there is virtual unanimity among the parties regarding the FCC's assessment that currently there is insufficient evidence to establish roaming requirements for CMRS systems. However, there is a substantial difference in opinion among the commenters on the issue of mandatory resale for all CMRS services.

Most of the parties commenting on this point focused their attention on issues relating to cellular/PCS resale obligations and opportunities. Few participants addressed specifically the complexities of introducing mandatory resale into the Specialized Mobile Radio ("SMR") service environment. Virtually all that did comment on this matter supported AMTA's position that resale obligations would present substantial technical and economic problems for the SMR industry.

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[1] Second Notice of Proposed Rule Making, CC Docket No. 94-54, FCC 95-149 (released April 20, 1995) ("Notice" or "NPR").

For the reasons described in its Comments in this proceeding and herein, AMTA respectfully urges the Commission to rely on the increasingly competitive CMRS marketplace, rather than federally-dictated resale provisions, to ensure that CMRS subscribers are offered a broad variety of service options at cost-efficient prices. Should the FCC decide to retain resale requirements for certain CMRS offerings, the Association requests that the SMR service be exempt from that obligation.

I THE RECORD DOES NOT SUPPORT A MANDATORY SMR RESALE OBLIGATION

A. THE PUBLIC INTEREST WILL BE SERVED IN THE COMPETITIVE CMRS MARKETPLACE WITHOUT MANDATORY SMR RESALE

The majority of parties supporting a mandatory CMRS resale requirement argued that adoption of such an obligation would be consistent with the FCC's policy of regulatory parity.[2] They also asserted that resale would promote the availability of a multitude of service offerings at competitive prices.[3] While conceding, for the most part, the expanding number of competitive wireless offerings, they suggested that obligatory resale would further enhance the variety and pricing of CMRS services.

Not surprisingly, most of the parties espousing this position offer either monopoly

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[2] *See e.g.,* Cellular Telecommunications Industry Association Comments at p. 22, GTE Comments at pp. 16-17, Southwestern Bell Mobile Systems, Inc. at p. 18, Sprint Telecommunications Venture Comments at pp. 9-10.

[3] *Id.*

wireline or duopoly cellular service, both of which already are subject to mandatory resale provisions.[4] The proposal also is supported by a number of parties that wish to resell cellular service, either as a stand-alone business or in anticipation of establishing a customer base for future PCS offerings.[5] Each of these categories relied on the concept of "regulatory parity", as well as public interest considerations, to justify the extension of resale obligations to all CMRS systems.

By contrast, the parties opposing mandatory CMRS resale provisions, in particular for the SMR and paging industries, argued that the new, intensely competitive CMRS paradigm will protect the public interest without government intervention.[6] They noted that resale was intended to serve as a substitute for competitive forces in markets characterized by monopoly or duopoly service providers, some of which controlled vital bottleneck facilities.[7] They also described the highly competitive nature of the SMR and paging industries, each of which already

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[4] *See* Resale and Shared Use of Common Carrier Services and Facilities, 60 FCC 2d 261, 263 (1976), *reconsideration*, 63 FCC 2d 588 (1977), *aff'd sub nom.* AT&T v. FCC, 572 F.2d 17 (2d Cir.), *cert. denied*, 439 U.S. 875 (1978); 47 C.F.R. § 22.901 (1994).

[5] *See, e.g.,* Connecticut Telephone and Communication Systems, Inc. Comments, National Wireless Resellers Association Comments, Telecommunications Resellers Association Comments.

[6] *See, e.g.,* AMTA Comments at pp. 8-9, Geotek Communications, Inc. ("Geotek") Comments at pp. 4-5, Nextel Communications, Inc. ("Nextel") Comments at p. 9, Paging Network, Inc. ("PageNet") Comments at pp. 3-6, Personal Communications Industry Association ("PCIA") Comments at pp. 10-12.

[7] *See, e.g.,* Geotek Comments at pp. 4-7, Nextel Comments at p. 8, AMTA Comments at p. 7, PageNet Comments at pp.3-6.

relies on voluntary resale arrangements as one means of service distribution.[8] Operators in these marketplaces have adopted electively the type of agreements the Commission now has proposed to make mandatory. Under these circumstances, adoption of the FCC's tentative decision would be antithetical to the concept of reduced government regulation and appropriate reliance on marketplace forces.

The difference of opinion among the parties on this point does not appear to reflect inconsistent objectives, but disagreement about the optimal method of achieving the same goal: providing the public with a rich variety of CMRS service options at rates that are just and non-discriminatory. Entities accustomed to the essentially non-competitive, and therefore more heavily regulated, wireline and cellular industries seemingly view resale as a routine, indeed indispensable vehicle for protecting the public against predatory pricing and discriminatory practices. Industries that have developed in a fully competitive environment, such as paging and SMR, recognize that competition itself dictates reasonable pricing and aggressive development of service options. Resale is one, but certainly not the only and likely not the most efficient, way of meeting those public interest considerations.

Moreover, despite assertions to the contrary by certain commenters, common carrier status does not include a resale obligation.[9] Common carriers, including CMRS operators, are not specifically required to make service available for resale. They are obligated to furnish

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[8] *See, e.g.*, PCIA Comments at pp. 12-13, AMTA Comments at p.9.

[9] *See, e.g.*, WorldCom, Inc., d/b/a LDSS WorldCom Comments at p. 2.

communication service upon reasonable request and to assess only just and reasonable charges for that service. 47 U.S.C. § 201. They also are prohibited from discriminating unreasonably against any person or classes of persons in these respects. 47 U.S.C. § 202. If these reasonableness requirements could be satisfied only by mandating resale of service, then such a requirement always would have applied to every common carrier offering, including common carrier paging, not just to wireline and cellular service. There would be no purpose to the FCC's investigation of the issue in this proceeding.

To the extent that SMR and private carrier paging operators become subject to CMRS, i.e. common carrier, obligations at the end of the statutory transition period,[10] they will have to ensure that they satisfy the statutory obligations referenced above. However, the record in the proceeding supports the conclusion that resale need not be mandated in these services to accomplish these Congressional directives.

For example, as noted by PageNet, prices for paging services have been falling rapidly over the past decade because of the competitive nature of that marketplace.[11] Similarly, the average monthly per unit charge for SMR dispatch service has decreased steadily from $15.81 to $14.70 between 1990 and 1994.[12] Charges to the public have dropped because the SMR industry itself is intensely competitive, and because, at some level, it competes for

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[10] Third Report and Order, GN Docket No. 93-252, 9 FCC Rcd 7988, (1994).

[11] PageNet Comments at pp. 7-8.

[12] AMTA-EMCI, Inc., *The State of SMR and Digital Mobile Radio 1994-1995*, p. 55.

customers with a number of other mobile service offerings.[13] This market-driven decrease in subscriber charges, even as SMR spectrum becomes less readily available, is precisely the public interest result the Commission hopes will flow from fostering a competitive CMRS marketplace. The fact that this objective is being satisfied without regulatory mandate supports the Commission's general proposition that "Given the number of competitors we expect to be present in this market in the near future, competitive forces should provide a significant check on inefficient or anticompetitive behavior." NPR at ¶ 96.

As in its tentative decisions regarding CMRS-to-CMRS interconnection and roaming, the FCC should rely on the workings of a competitive marketplace, not resale obligations, to ensure reasonable CMRS pricing, at least for those services without market power or bottleneck control, unless there is evidence that the marketplace is no longer operating in the public interest.

B. MANDATORY RESALE WOULD IMPOSE SUBSTANTIAL ECONOMIC AND TECHNICAL BURDENS ON THE SMR INDUSTRY

In the Notice, the Commission indicated a tentative view that requiring resale would "involve minimal expense and no technical problems for most of the CMRS licensees subject to the requirement." NPR at ¶ 85. Nonetheless, the agency acknowledged that certain classes of CMRS providers might be able to show that permitting resale would not be technically feasible or economically reasonable. NPR at ¶ 83.

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[13] Third Report and Order, GN Docket No. 93-252, 9 FCC Rcd 7988, (1994).

The SMR industry has made that showing. The comments submitted by SMR operators and their representatives described in detail the fundamental differences between the technical characteristics of SMR versus cellular subscriber units.[14] They explained that none of the equipment formats used in SMR systems include standardized subscriber unit electronic serial numbers ("ESNs") comparable to those that enable cellular operators to permit resale freely without jeopardizing the integrity of their systems.[15] A number of parties detailed the fraud and system degradation issues that would arise if SMRs were obligated to "open" their operations, including information regarding unit ID coding, to the public indiscriminately.[16] SMR system have few or no internal, defensive devices to protect against such abuses since non-voluntary resale was not an anticipated obligation. Imposition of such a requirement would dictate that the industry either fund the retrofitting of the almost two million subscriber units in operation, plus the associated base station facilities, to more closely approximate the cellular model or simply absorb the costs resulting from fraud and misuse of these systems. Since voluntary resale already is used when appropriate control can be exercised, and service charges approximate cost levels because of competitive pressure, neither approach would serve any obvious public interest goal.

While a number of commenters recommended that mandatory resale be applied generally to CMRS services, only a single party specifically challenged the potential exclusion of the SMR

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[14] *See, e.g.*, AMTA Comments at pp. 10-14, Nextel Comments at pp. 13-15, PCIA Comments at pp. 17-19, The Southern Company Comments at pp. 4-9.

[15] *See, e.g.*, AMTA Comments at p. 11, PCIA Comments at pp. 17-19.

[16] *See, e.g.*, AMTA Comments at pp. 12-14, PCIA Comments at pp. 18-19.

industry from this obligation. The Information Technology Association of America ("ITAA"), a computer software and services industry trade association, cautioned the Commission to scrutinize carefully any claims for exclusion, including those from the SMR community, to ensure that they do not "mask efforts to limit competition."[17] ITAA professed no particular expertise in SMR industry activities or knowledge about the technical details of SMR systems. Nonetheless, it argued that SMR capacity constraints should not constitute a basis for excluding the SMR community from resale obligations since, "a resale obligation is even more important in an environment characterized by limited capacity, where it will prevent facilities-based carriers from exploiting their limited capacity at their subscribers' expense.[18]

It appears that ITAA must be unacquainted with the genesis of the SMR industry, with its twenty-year regulatory history, and with the capacity issues associated with this service. Unlike the marketplaces with which ITAA seemingly is familiar, the SMR regulatory framework, from the outset, was designed to promote the implementation of competitive systems, and unquestionably was successful in doing so. The continued intense competition in this part of the CMRS industry is reflected in the decreasing dispatch service charges detailed above. ITAA has not explained why it believes mandatory resale nonetheless is needed to spur competition in this service, and has provided no evidence whatsoever that limited capacity has permitted SMR operators to charge unfair rates.

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[17] ITAA Comments at p. 5.

[18] Id.

In fact, the capacity constraints to which the SMR industry has referred in seeking an exemption from mandatory resale do not represent a shortage of dispatch or interconnection alternatives in any market. Cellular service alone, which recently was authorized to offer dispatch as well as mobile telephone service [19], has 50 MHz of capacity throughout the nation, much of which remains unoccupied. By contrast, SMR frequencies were doled out in 5 channel increments, and only upon a demonstration that already authorized frequencies were loaded. These FCC-imposed loading requirements have dictated that individual SMR systems, unlike cellular and PCS which are awarded large blocks of spectrum at the outset, have very limited channel capacity which must be managed carefully. The particular number of frequencies assigned to each system will determine the mix of customers and usage patterns that will permit an acceptable grade of service to subscribers. Mandatory resale could quickly disrupt this balance and seriously degrade service quality.

ITAA also has failed to address the serious subscriber unit management and fraud-related issues that have been identified by SMR operators and representatives.[20] It likely does not appreciate the significant technical differences between uniquely identified hard-wired and cellular telephones and the assignment of IDs in trunked radio groups. Mobiles on SMR systems frequently are "identified" as a group rather than as individual subscriber units, thereby facilitating the cost-efficient provision of "one-too-many" fleet dispatch prevalent on SMR

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[19] In the Matter of Eligibility for the Specialized Mobile Radio Services and Radio Services in the 220-222 MHz Land Mobile Band and Use of Radio Dispatch Communications, Report and Order, GN Docket No. 94-90, (Released March 7, 1995).

[20] *See* note 16.

systems. Depending on the size of the customer's fleet, all units may be assigned a single ID or they may be configured into multiple sub-fleets, each of which shares a group identifier. If an SMR operator were required to provide to resellers generally the available ID assignments, current SMR system design would make it impossible to prevent essentially unlimited unit cloning, particularly in the many instances in which the system does not employ airtime billing. Under these circumstances, there is a distinct probability that mandatory resale would harm, not help, the very subscribers for whose benefit it is intended.

CONCLUSION

The SMR industry has documented that mandatory resale would not be technically feasible or economically reasonable. Moreover, it has demonstrated that this obligation is not needed to ensure the availability of competitive services at reasonable prices. The record clearly supports exclusion of this segment of the CMRS industry from a resale requirement.

For the reasons described, AMTA urges the Commission to proceed expeditiously to complete this proceeding, consistent with the recommendations detailed herein.

CERTIFICATE OF SERVICE

I, Cheri Skewis, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify that I have, on this 14th day of July, 1995, placed in the United States mail, first-class postage pre-paid, a copy of the foregoing Reply Comments to the following:

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